

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

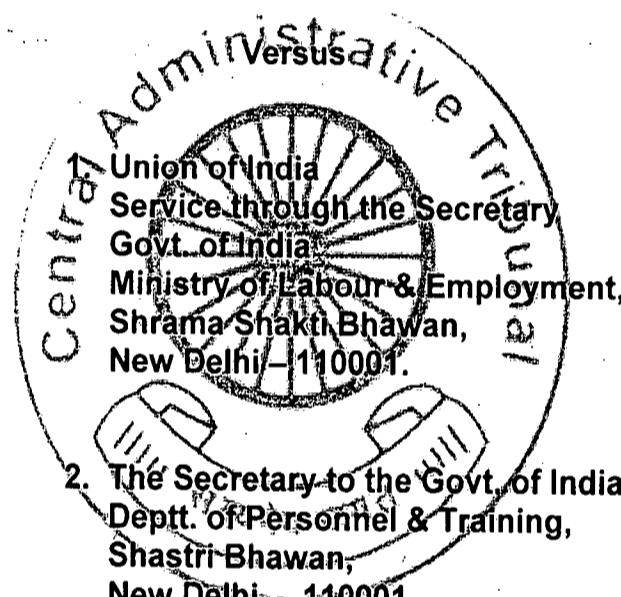
No. O.A. 213 of 2014

Date of order: 12th October, 2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Rabin Chandra Das,
(age : 52 years),
S/O Baikuntha Nath Das,
Working as Mech./Fitter under the
Director Incharge,
Regional Labour Institute,
Kolkata,
Residing at 101/1 Subhasnagar Bye Lane,
Via Sadhan Bhattacharyya Road,
Kolkata - 65.

... Applicant.



2. The Secretary to the Govt. of India
Dept. of Personnel & Training,
Shastri Bhawan,
New Delhi - 110001.
3. The Director General
D.G.F.A.S.L.I.,
Sion, Mumbai - 22.
4. The Director Incharge
Regional Labour Institute,
Lake Town,
Kolkata - 700089.

... Respondents

For the Applicant : Mr. N. Roy, Counsel

For the Respondents : Mr. B.P. Manna

(Signature)

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has come up in the fourth stage litigation in the instant Original Application in which he seeks the following relief:-

"8.(i) To pass Order/Direction upon the respondent authorities to grant L.D.C Pay Scale of Rs. 5500-9000/- to the applicant instead of Scale Rs. 4000-6000/- by treating the Post of the applicant as L.D.C. as per the Judgement/ Order of the Hon'ble High Court at Punjab and Haryana at Chandigarh and also the Hon'ble Supreme Court passed in the case of "Rajpal -vs- Union of India & Ors." by setting aside the Order dt. 07.3.2013."

2. The case of the applicant, in brief, is as follows:-

That, the applicant was appointed as Mechanist/Fitter by the respondents in the pay scale of Rs. 3050-4500/- vide order dated 10.8.1983. Vide order dated 12.7.2000, he was granted the first financial upgradation w.e.f. 9.8.1999 in the pay scale of Rs. 4000-6000/- Vide another order dated 4.2.2008, he was granted the second financial upgradation in the pay scale of Rs. 4500-7000/- w.e.f. 10.8.2007. The respondents, however, issued an Officer Order dated 03.09.2008 holding that he was entitled to financial upgradation only in the pay scale of Rs. 3200-4900/- and Rs. 4000-6000/- respectively and directing the recovery of over payments made, if any.

The applicant, approached the Tribunal by filing O.A. No. 1629 of 2009. It was disposed of vide order dated 11.1.2010 (Annexure A) with the following directions:-

"4. Considering the issue involved in this case, we are of the view that justice would be met if a direction is given to the applicant to make representation to the competent authority within a time frame. We accordingly direct the applicant to make a representation to respondent No. 2 within three weeks from today and on receipt of such representation the said authority or any other competent authority shall consider and dispose of the same within a time frame of six weeks thereafter. It is made clear that the respondents, while disposing of the same, shall give due weightage to the decision as cited by the Ld. Counsel for the applicant. However, by way of interim order, we further direct that no further recovery will be made by the respondents from the salary of the applicant. The O.A. is accordingly disposed of. In the circumstances, no order is passed as to costs."

[Signature]

That, pursuant to the said directions, the applicant submitted a representation dated 25.1.2010 (Annexure A-1) indicating therein that he is an educated ITI pass skilled category staff and had rightly been granted ACPs as the post of Fitter is an isolated post. A legal notice was also sent on his behalf for implementing the said decision of the Tribunal and also for taking into account the decision of the Chandigarh Bench in O.A. No. 278-CH-2004 (Raj Pal v. Union of India & others) as the orders in Raj Pal (supra) had been implemented. The applicant was informed, however, that although recovery has been stopped, the recovered amount cannot be refunded and that the judgment of the Chandigarh Bench is not applicable in his case.

The applicant preferred another O.A. 2257/2010 against the said order which was disposed of with a direction to the respondents to refer the matter to the Department of Personnel & Training (DOP&T), the nodal department, which was required to examine the issue in consultation with the Ministry of Finance. Vide order dated 08.08.2011, however, the request of the applicant was regretted (Annexure R-3 to the reply).

Thereafter, the applicant sought for quashing of the order dated 8.8.2011 in O.A. No. 1206 of 2011 which was disposed of with the following directions:-

"14. In view of the foregoing discussions, the impugned order cannot be sustained. We quash the same and remit the matter back to the Secretary, Labour and Employment who in consultation with the Secretary, Department of Personnel & Training and Secretary, Department of Expenditure, if need be, will pass a proper order within three months of the receipt of a copy of this order.

15. The earlier directions regarding refund of the recovered amount are quashed and shall also be re-considered.

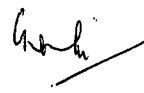
16. They can also examine if, after coming into force of the 6th CPC w.e.f. 1.1.2006, financial upgradations could have been given under the ACP Scheme or under the MACP Scheme in the case of the applicant."

In compliance with the same, the respondents issued a speaking order dated 7.3.2013 (Annexure R-6 to the reply) which has been challenged by the applicant in the instant Original Application.

[Signature]

3. The respondents, per contra, have argued that as the applicant is holding an isolated post i.e. a stand-alone post to which there is neither any feeder grade nor promotional grade, the financial upgradations were given to him erroneously. As the promotional hierarchy was refixed in revised pay scale of Rs. 3200-4900/- from 9.8.1999 and Rs. 4000-6000/- from 10.8.2007 he was entitled for immediate next higher standard common pay scale as per the ACP Scheme. It was further argued that the entry level qualification for the post of 'Fitter' in DGFASLI is Class-VIII Standard passed and certificate in the trade of Fitter from any recognized institute and not Madhyamik (SSC) passed as with the 'Fitter cum Mechanic Grade' in the West Bengal Government (during the year 1979-81) as mentioned by the applicant.

According to respondents' clarification No. 10 issued by DOPT enables grant of financial upgradation as applicable to similar posts in the same Ministry/Department/Cadre to employees holding isolated posts. Similar posts in the same ministry/department cadres are to be examined with reference to the posts carrying the same scale of pay same maximum of pay scale, comparable duties and level of responsibilities attached to the posts, comparable, eligibility condition for appointment etc. The posts of the machinist/fitter and LDC are not similar and hence are not comparable. Fulfilment of promotional norms applicable to an LDC or grant of financial upgradation cannot be insisted upon for grant of financial upgradation to a machinist/fitter. The respondents further contend that the case of the applicant is not a fit case for grant of ACP at par with the LDC, as per Ministry's order dated 7.3.2013 which was issued in consultation with DOP&T & DOE in compliance to directions in O.A. No. 1206 of 2011 and as the competent authority has clearly stated that the post of Machinist/Fitter and LDC are not similar and hence not comparable, fulfilment of promotional norms applicable to an LDC or grant of financial upgradation cannot be insisted upon by the applicant for grant of financial upgradation to a Machinist/Fitter.



ISSUE

6. The points of determination in the instant Original Application are:

- (i) Whether the speaking order dated 7.3.2013 is liable to be quashed; and
- (ii) Whether the applicant is entitled to the scale of Rs. 5500-9000/- payable to LDCs by treating the post of the applicant as LDC as per judgment/order of the Hon'ble High Court at Punjab & Haryana at Chandigarh in Raj Pal (supra).

FINDINGS

7. The speaking order (Annexure A-10 to the O.A.) is examined in detail and the following are inferred therefrom:-

(a) The concerned Ministry i.e. Ministry of Labour and Employment had consulted the DOPT in consultation with the orders of the Tribunal who had observed that the Mechanic/Fitter is an isolated post and, in the absence of defined hierarchical grade financial upgradations are to be given in the standard/common pay scale as indicated in Annexure II of the O.M. dated 9.8.1999. Annexure A-II of O.M. dated 9.8.1999 is reproduced below:-

STANDARD/COMMON PAY SCALES

As per Part-A of the First Schedule Annexed to the Ministry of Finance (Department of Expenditure) Gazette Notification dated September 30, 1997

[REFERENCE PARA I OF ANNEXURE I OF THIS OFFICE MEMORANDUM]

S. No.	Revised pay scales (Rs.)	
1.	S-1	2550-55-2660-60-3200
2.	S-2	2610-60-3150-65-3540
3.	S-3	2750-70-3800-75-4000
4.	S-4	2750-70-3800-75-4400
5.	S-5	3050-75-3950-80-4590
6.	S-6	3200-85-4900
7.	S-7	4000-100-6000
8.	S-8	4500-125-7000
9.	S-9	5000-150-8000
10.	S-10	5500-175-9000
11.	S-12	6500-200-10500
12.	S-13	7450-225-11500

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13.	S-14	7500-250-12000
14.	S-15	8000-275-13500
15.	S-19	10000-325-25200
16.	S-21	12000-375-26500
17.	S-23	12000-375-28000
18.	S-24	14300-400-18300

(b) Clarification No. 10 issued by DOP&T enables grant of financial upgradation as applicable to similar posts in Ministries/Department/Cadre to employees holding isolated posts, to be examined with reference to posts carrying the same scale of pay or has the same maximum of the pay scale, comparable duties and level of responsibilities attached to posts, comparable eligibility conditions for appointment etc.

(c) The posts of Mechanic/Fitter are dissimilar and hence not comparable and fulfilment of promotional norms applicable to an LDC for grant of financial upgradation cannot be insisted upon for grant of financial upgradation of Mechanic/Fitter.

(d) That, the judgment passed by Tribunal in *Raj Pal v. Union of India (supra)* were challenged appropriately and that the Department of Expenditure has concurred with the views of DOP&T.

(e) As MACP Scheme has been made effective w.e.f. 1.9.2008, any upgradation due upto 31.8.2008 is to be covered under the earlier Scheme and has been suitably applied in case of the applicant.

The respondents have also furnished the notification of DOPT dated 4.8.2010 whereby the qualifications of LDC at entry level have been laid down. The respondents have also furnished a chart showing the duties of LDC vis-à-vis that of a Machinist/Fitter whereby the disparities and distinctions in functional responsibilities and entry level qualifications are recorded.

The applicant has traversed through a series of litigations before the Tribunal in 2009, 2010 and 2011 and in each of which he has been insisting on the application of the decision in *Raj Pal v. Union of India (supra)* in

terms of the order of the CAT, Chandigarh Bench in O.A. No. 278-CH-2004 dated August 30, 2004. The said order was disposed of with the following observations:-

"..... Hence, the basic criterion to allow the higher pay scale under ACPs should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACP so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different post for which appointment was made by direct methods like direct recruitment, absorption (transfer)/deputation or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPs." The true interpretation of the clarification given by the Respondent No. 1 would be that one should have rendered a particular length of service, which in the case of grant of 1st upgradation under ACP is 12 years, in a particular scale. There is no reference to rendering service in a particular scale on a regular post. The mandate of the instructions is that if a person has rendered service in a particular scale, even if that be on deputation basis followed by absorption, the service rendered in a particular scale on deputation would also count for grant of benefit under ACP Scheme. The applicant was on deputation w.e.f. 21.4.1986 and was made regular on 12.10.1987. Thus, the service rendered by him from 21.4.1986 to 11.10.1987 on deputation basis, cannot be washed away for determining the period of 12 years for the grant of 1st financial upgradation under the ACP Scheme. Thus, the applicant was eligible for grant of 1st Financial Upgradation w.e.f. 21.4.1998 instead of w.e.f. 12.10.1999."

According to the applicant this order of the Tribunal in *Raj Pal v. Union of India (supra)* has attained finality as the decision has been upheld in the higher judicial forum.

We find from the speaking order that the entire reference of *Raj Pal v. Union of India (supra)* was disposed of with a single sentence as follows:-

"With regard to judgment passed by Tribunal in similar cases (*Raj Pal v. Union of India etc.*) as referred to in the judgment it may be stated that the same was challenged appropriately." This sentence does not indicate whether the decision in *Raj Pal v. Union of India* had attained finality consequent to such challenge. The order also does not deny that the judgment was upheld at the higher forum despite being challenged. Once a decision attains finality, it becomes binding in the case of similarly circumstanced individuals.

As directed in the Full Bench decision of *John Lucas v. Addl. Chief Mechanical Engineer, S.C. Ry. (1987) 3 STC 328 (Bang)(FB)* wherein it was held that the Tribunal may either agree with the view taken in the earlier judgment or it may dissent. A Tribunal can dissent with earlier orders of Coordinate Benches/same Bench if enough materials and documents are produced advancing the cause of such dissent or disagreement. In this case, the respondents have not produced any material before us to prove that the applicant was not similarly circumstanced as Raj Pal in O.A. No. 278-CH-2004. The respondents have also failed to establish as to why the decision in Raj Pal will not be applicable to the applicant concerned.

8. Hence, we set aside the speaking order dated 7.3.2003 (Annexure R-6 to the reply) and direct the respondent authorities to examine whether the applicant is similarly circumstanced as in the case of *Raj Pal (supra)* in a reasoned and speaking order. In case the decision in *Raj Pal (supra)* is binding on the respondents and if the applicant is found to be similarly circumstanced, the respondents may grant him the consequent benefits.

This exercise may be completed within 12 weeks of receipt of a copy of this order.

9. With this, the O.A. is allowed and disposed of accordingly. No costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP